IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Smt. Durga alias Renu. Versus Jalam Singh.

S.B. Criminal Misc. Petition No. 1227/2006
against the order dated 16-5-2006 passed
by the Judge, Family Court, Jodhpur, in
Criminal Case No. 5/2005.

...

Date of Order: November 28, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Dr. S.S. Jodha, for the petitioner.
Mr. K.L. Maheshwari, for the non-petitioner.

BY THE COURT:

Heard learned counsel for the parties. Perused the order dated 16-5-2006 passed by the Judge, Family Court, Jodhpur (for short, "the Family Court" hereinafter) in Criminal Case No. 5/2005, awarding monthly allowance of interim maintenance @ Rs.800/- in favour of the petitioner from the date of the order.

Learned counsel for the parties submit that the parties have approached the Family Court for restitution of conjugal rights as also for dissolution of the marriage, wherein the petitioner herself has alleged that the non-petitioner is suffering from mental ailment, hospitalized and remained under treatment. There is no pleading that the non-petitioner is

employed on regular salary.

Granting of monthly allowance of interim maintenance is an interim arrangement on an application under Section 125 Cr.P.C. filed by the petitioner, which has to be decided after recording the evidence of the parties. Learned counsel for the non-petitioner submits that the non-petitioner is suffering from mental ailment and has not been earning anything and he is unemployed.

Be that as it may, these questions are to be decided by the Family Court after recording the evidence of the parties and, therefore, without commenting on the merit of the case as to whether the non-petitioner is suffering from mental ailment or not and whether he is employed or unemployed, I do not consider it a fit case to interference with the impugned order in the inherent jurisdiction.

The criminal miscellaneous petition is, therefore, dismissed. It will be open for the court below to decide the main application under Section 125 Cr.P.C. to grant the monthly allowance of maintenance or not and it is to be awarded then from which date.

(H.R. PANWAR), J.

mcs